IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No.119/1996

Decided on.18.6.2006

State of H.P. **…Appellant.**

Versus

Maina Devi **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No*

For the appellant : **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals**

For the respondent **Mr. K.D. Sood, Advocate.**

Rajiv Sharma, J.

The present second appeal arises out of the judgment and decree dated 20.12.1995 passed by the District Judge, Hamirpur.

The brief facts necessary for the adjudication of this appeal are that the respondent-plaintiff (hereinafter referred to as the plaintiff for convenience sake) had filed a civil suit in the court of Senior Sub Judge, Hamirpur. On the pleadings of the parties, the trial court had framed the following issues:

1. **Whether the plaintiff is entitled for the relief of declaration and injunction as prayed for? OPP.**
2. **Whether the suit of the plaintiff is maintainable in the present form or not? OP parties.**
3. **Whether the suit is time barred? OPD.**
4. **Whether the suit is not properly valued for the purposes of C.F. and jurisdiction? OPD.**
5. **Whether the plaintiff is estopped to file the suit? OPD**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No

6. **Whether the Court has not jurisdiction to try the suit as alleged? OP Parties.**
7. **Relief.**

The trial court had recorded the following findings on the issues framed:

Issue No. 1 Yes.
Issue No.2 Yes.
Issue No.3 No.
Issue No.4 No.
Issue No.5 No.
Issue No.6 No.
Issue No.7 Suit decreed as per operative portion of the judgment.

The trial court decreed the suit on 7 .5.1990. The defendant filed appeal against the judgment and decree passed by the Senior Sub Judge before the District Judge, Hamirpur on 16.8.1990. The District Judge had formulated the following points for determination:

1. **Whether the impugned judgment and decree warrants interference?**
2. **Relief.**

The findings recorded by the District Judge are as under:

Point No.1 No.
Relief: Per operative part of the judgment, both the appeals are dismissed.

The appeal was dismissed by the District Judge on 20th December, 1995.

The second appeal was admitted on the following substantial questions of law:

1. **Whether the civil court has no jurisdiction to entertain and try the suit in view of the bar created by section 10 of the H.P. Village Common Lands (Vesting & Utilization) Act, 1974 and**

under section 13 of the Punjab Village Common Land (Regulation) Act, 1961?

2. **Whether the land in dispute being shamlat has rightly been vested firstly in Panchayat and then in the State of H.P. free from all encumbrances and all rights title or interest existing on the suit land stood extinguished by operation of law?**
3. **Even otherwise, the misreading of documentary and oral evidence itself amounts to substantial question of law.**

The learned Advocate General had strenuously argued that the land in suit had vested in the State and the judgment and decree passed by the District Judge is not sustainable.

Mr. K.D. Sood, Advocate had supported the judgment passed by the District Judge on 20.12.1995.

I have heard the learned counsel for the parties and have gone through the record of the case.

Since all the substantial questions of law are inter-connected, therefore, the same can be conveniently discussed together. The plaintiff had averred in her suit for declaration that the disputed land was recorded in the possession of her late husband Sh. Shiv Ram in the jamabandi for the year 1922-23 of Tikka Ghangot, Tappa Garli, Tehsil Garli and in the column of remarks it has been written that the land has been given to him vide mutation No. 43 by way of grant by the then Deputy Commissioner, Kangra on 25.12.1999 by way of Nautor. After the death of Sh. Shiv Ram, the land was mutated in the name of Sh. Gian Chand son of Sh. Shiv Ram. Shri Gian Chand died and the land was subsequently mutated in the name of plaintiff. The trial court on the basis of the oral as well as documentary evidence i.e. record of rights with effect from 1919-20 onwards had decreed the suit. The trial court had given findings that the name of the plaintiff could not have been deleted from the jamabandi for the year 1981-82. He had also recorded a finding that the plaintiff was in

possession even prior to 26.1.1950. The trial court had rightly ignored the entry in the column of ownership showing the land as *Shamlat tikka Hasab Rasab Mal Guzari* since it has been mentioned that the land was allotted to Shiv Ram. The District Judge had also scrutinized all the record of rights and had come to a just conclusion that the plaintiff was owner of the land in suit land and the contrary alteration in the record of rights was illegal. The mutation was attested in favour of the plaintiff's husband on 21.2.1920. The record of rights always reflected the name of Shri Shiv Ram and the same continued without interruption till the year 1972-73 and after his death the name of Sh. Gian Chand was incorporated and after his death, the name of the plaintiff was entered in the record of rights. The jamabandi for the year 1922-23 Ex. P-8, 1930-31 Ex.P-3, 1938-39 Ex.P-4, 1946-47 Ex.P-5 and 1972-73 Ex. P-9 the name of Sh. Shiv Ram , Gian Chand and plaintiff are recorded. It was only for the first time in the year 1981-82 that the name of the appellant-State came to be entered in the column of ownership and in the jamabandi of the same year i.e. Ex.P-7 the name of one Sh. Govind was entered in the column of ownership in khasra No.845/808. Same entries were recorded in the year 1985-86.

In the jamabandi for the year 1918-19 though the land is entered as Shamlat Tikka in the possession of the proprietary body yet there is an entry regarding mutation No.43 showing 22 kanals 5 marlas land comprised in khasra No. 808/1 and 802/2 having been allotted to Sh. Shiv Ram by way of Nautor. Even in the jamabandi for the year 1976-77 and 1972-73 Ex. D-12 and D-13, the name of the plaintiff has been shown in the column of cultivation. Once the land had been allotted to the plaintiff's husband as per Ex.P-1, the same amounts to be taken out of the category of *Shamlat deh*. Accordingly it cannot be held that the land was ever vested in the State.

The upshot of the above discussion is that there is no question of law much less to say substantial question of law involved in the second appeal and the findings recorded by both the courts below are correct and in accordance with law. The land was granted in favour of the plaintiff's husband by way of grant and in the janambandi up to the year 1972-73, the name of Sh. Shiv Ram, Gian Chand and plaintiff were reflected. No material has been placed on record to substantiate how the entries were altered in favour of the State and one Sh. Govind Ram after 1972-73. The land in question cannot be presumed to be vested in the State once the same stood allotted to Sh. Shiv Ram on the basis of the order passed by the Deputy Commissioner pursuant to which the mutation was also attested vide mutation No. 43.

Accordingly the second appeal is dismissed with no order as to costs.

(Rajiv Sharma), Judge

18.6. 2007
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